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Supreme Court of the United States

October Term 1973

No. Misc. 73-6104

FRED CASTLEHUN,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI

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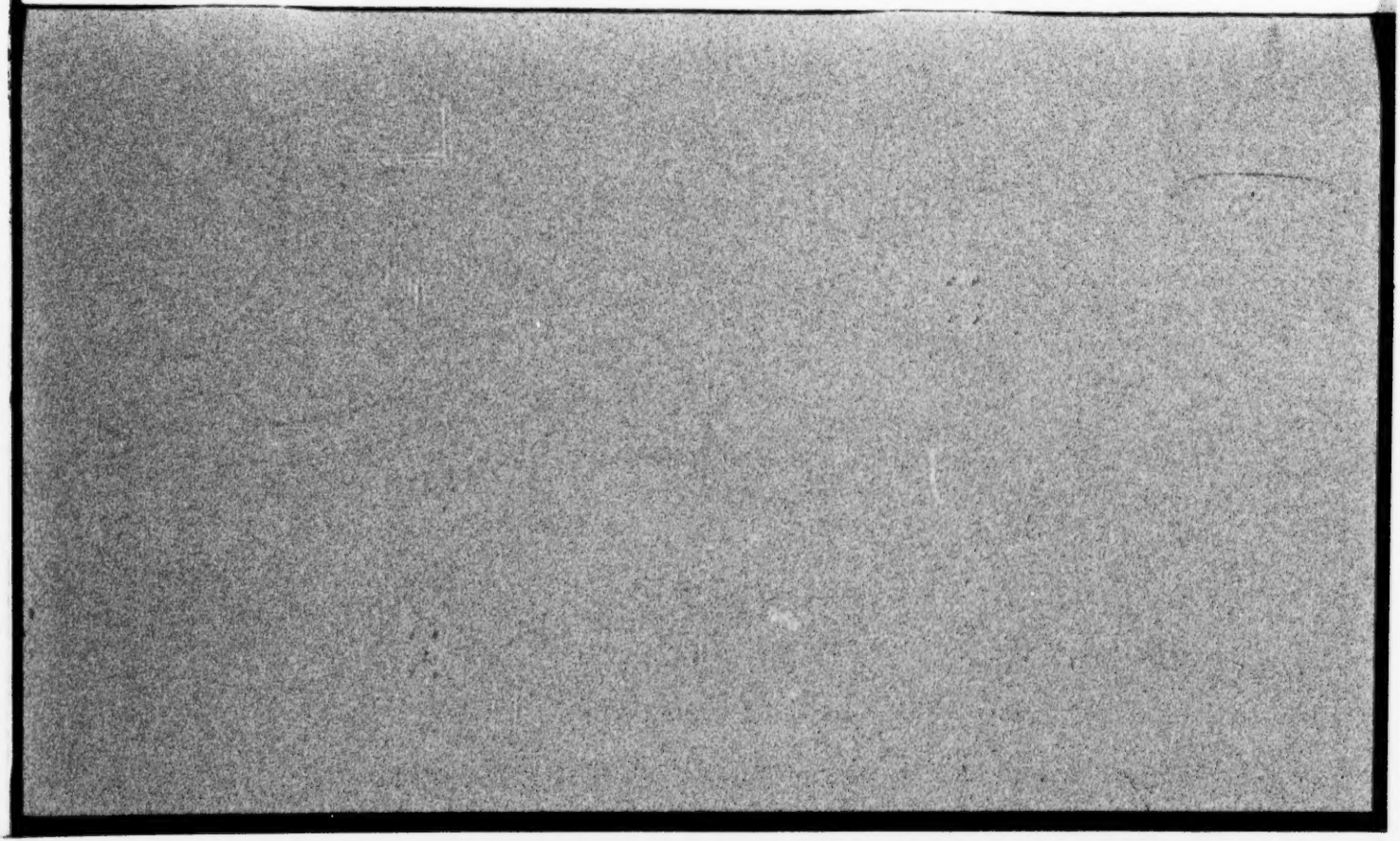

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THE PEOPLE OF THE STATE OF NEW YORK,

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BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI

The petitioner, Fred Castlehun, prays that a writ of certiorari issue to review a judgment of the Appellate Division, Second Judicial Department, New York Supreme Court dated October 23, 1973 which affirmed a judgment of the County Court, Nassau County dated February 6, 1973 convicting petitioner after a non-jury trial of Robbery in the Third Degree. Petitioner was sentenced on March 10, 1973 to one year in the Nassau County Jail. A copy of the judgment of the New York Supreme Court, Appellate Division affirming petitioner's conviction is annexed as Exhibit A.

An application pursuant to Section 460.20 of the New York Code of Criminal Procedure for leave to appeal to the New York Court of Appeals was denied by Hon. Sol Wachtler, Associate Judge of the Court of Appeals, on November 27, 1973. A copy of the certificate denying leave is attached as Exhibit B.

Jurisdiction

The jurisdiction of this Court is sought pursuant to 28 U.S.C.A. 1257 subd. 3, it being contended that petitioner's Fifth and Sixth Amendment rights as circumscribed by this

Court in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), were not properly complied with.

Facts

The People first called Detective Skulnick of the Nassau County Police Department. On July 1, 1970 at approximately 7 A.M. in the morning the witness went to 116 Monroe Street, Lawrence, New York and photographed a black Cadillac in the driveway (Minutes of Trial at pp. 9-10).

PATROLMAN NIVEN of the Crime Prevention Unit, Nassau County Police Department next testified. On July 1, 1970 he was on patrol in plain clothes and in an unmarked car in the vicinity of Monroe Street, Lawrence, New York (pp. 26-28). At approximately 3:45 A.M. the witness saw a white Mustang parked at the corner of Monroe Street and Meadow Lane (p. 28). He observed two people, one in the car and another, the defendant, outside the car (p. 30). He saw the defendant drop an object from his hand. The witness retrieved the object which turned out to be a black plastic cap (pp. 33-34). The witness asked the defendant why he was in the area and the witness stated that his car had broken down earlier in the day and that he and friends had gotten the car started and he was about to leave (pp. 35-36). Patrolman Niven radioed for assistance which arrived after which he proceeded to check the area for signs of attempted burglaries (pp. 37-38). One of the assisting officers, Patrolman Gray, called the witness' attention to a 5-gallon plastic container located under a car at 116 Monroe Street (pp. 38-39). This container had a towel emerging from its neck with a lighted cigarette in a book of matches resting on top of the towel (p. 40). The container was half filled with liquid and the towel was wet. There was a strong odor of gasoline in the area. The witness removed

the towel from the container neck and tried the plastic cap that he had observed the defendant drop. The cap fit the container found under the car (p. 43). At this point the witness placed the defendant and the occupant of the car under arrest and searched the car. The witness found another container of the same description as the one found under the car in the driveway. The witness also found numerous plain white match books on the dashboard of the Mustang (45-46). The witness took defendant and the occupant of the Mustang to the Fourth Precinct Nassau County Police Department. The witness observed the occupant smoking Salem cigarettes while at the stationhouse. This was the same brand of cigarette as one found in the match book-towel combination found under the Cadillac automobile (pp. 45-47).

At this point the parties stipulated that the device found under the Cadillac was an explosive incendiary device that could do extensive damage (pp. 69-78).

The People next called PATROLMAN FRANZKE, a member of the Nassau County Police Department. Patrolman Franzke testified that at approximately 4 A.M. he observed a white Mustang parked at the corner of Monroe Street and Meadow Lane, Lawrence, New York. He also observed the defendant standing next to the car and another man behind the wheel (pp. 80-83). The witness observed Patrolman Niven go up the block in response to a summons by one of the assisting officers. He saw Patrolman Niven return, place the defendant and the occupant of the car under arrest and then search the car. The witness observed a plastic container in the trunk of the Mustang and plain white match books on the dashboard of the car. The witness and Patrolman Niven transported the defendant to the Fourth Precinct Station House (pp. 86-88).

PATROLMAN GRAY of the Nassau County Police Department testified that on July 1, 1970 at approximately 3:30 A.M. he went to 116 Monroe Street, Lawrence, New York in response to a prowler call. The witness went directly to 116 Monroe Street because at 11:30 the previous evening he had responded to that same address. The witness observed an apparent gas leak under the Cadillac parked in the driveway of 116 Monroe Street. Upon closer observation he observed a white plastic container with a towel protruding from the opening and a match book with a lit cigarette fuse resting on the towel (pp. 114-116). He extinguished the cigarette; replaced the fuse and summoned Patrolman Niven. He saw Patrolman Niven try the black plastic cap on the container and saw the cap fit the container (p 118).

SHELDON KLEINMAN, owner of the Cosmopolitan Dry Cleaning Machinery Company next testified for the People. The defendant was an employee of the company the latter part of 1969 and the beginning of 1970 (pp. 140-141). On June 4 the witness experienced labor trouble at his place of business. As the result of this labor difficulty picketing started at his store. About a week after the picketing started, defendant joined the picket (p. 142). The defendant had not been employed by the company for four or five months prior to the picketing (p 142). In the middle of June the witness and his partner were working at their place of business transferring some machinery from a burnt rigging truck to a rented truck (pp. 143-144). The witness heard someone yell, "Look out under the truck." He saw the defendant roll out from under the rented truck with a knife in his hand. He investigated the truck after this incident and observed that the brake lines of the rented truck had been cut (pp. 145-146).

On July 1, 1970 the witness and his partner, staying together for protection, went to the witness' home at 116 Monroe Street, Lawrence, New York in the partner's Cadillac at approximately 2 A.M. (pp. 146-147). The witness was watching the outside of the house for a strange car. At approximately 4 A.M. he observed a car pass. A few minutes later he observed the occupant of the car, Ralph Ronga, in the driveway behind the witness' car (p 149). Ronga was an employee of the witness. Approximately six minutes later the witness went outside where he met a policeman who showed the witness the incendiary device under his partner's car. The witness testified that neither he nor his partner placed the device under the car (pp. 151-153).

GEORGE SCHOENBERG testified that on July 1, 1970 he was a co-owner of Cosmopolitan Dry Cleaning Machinery Company and that the defendant was a former employee of that company (174). Defendant left the firm in early 1970 and was next seen on the picket line set up at the firm in June (175-176). In the middle of June while transferring machinery from a burnt truck the witness heard a woman yell. The witness observed the defendant scoot out from underneath the truck (177). On July 1, 1970 he went to Kleinman's house and parked his car in the driveway. At approximately 4 A.M. Kleinman woke him up and when the witness went outside a policeman showed him the incendiary device under his car (pp. 179-180).

DETECTIVE HAROLD SKULNIK was recalled for the purpose of cross-examination and testified that he believed that Kleinman did not tell him that he saw Ronga in his driveway. The defendant, on being questioned by the officer, denied the incendiary material was his (p. 197).

POINT I

The writ should be denied.

Petitioner maintains that certain oral statements made to Patrolman Niven of the Nassau County Police shortly before his arrest were improperly admitted into evidence at his trial. Petitioner argues that he was "in custody" within the meaning of that term as set forth in *Miranda* v. *Arizona*, 384 U.S. 436 (1964), and therefore, he should have been advised of his constitutional rights prior to the point at which he made his oral statements to the police officer.

At trial, the evidence established that Patrolman Niven observed petitioner standing next to a white Mustang at approximately 3:45 A.M. in a residential area (Minutes of Trial at pp. 29-30). The patrolman approached the petitioner, identified himself as a police officer and requested that the petitioner produce identification (33). As he approached the petitioner, the police officer noticed him drop an object to the grass. The patrolman retrieved the object, which turned out to be a black plastic cap (33-34).

Patrolman Niven asked the petitioner what the object was, but petitioner made no response (p. 35). The police officer then asked why petitioner was in the vicinity and petitioner explained that his car had broken down earlier in the day, that he had been dropped off by friends and that they had finally gotten the car started and were about to leave the area (p. 36). Petitioner also produced identification (p. 37).

The People respectfully submit that there was no violation of the Miranda requirements.

Upon seeing the petitioner under suspicious circumstances, the police officer approached the defendant and

asked him certain routine investigative questions, such as his identification and why he was in the vicinity. Moreover, petitioner's response was exculpatory in nature and could not in any way be construed as an incriminatory admission or confession.

In *Miranda* v. *Arizona*, supra at 384 U.S. 477-478 the Court stated that the constitutional requirements it was setting forth were not intended to otherwise "hamper the traditional function of police officers in investigating crime."

> "General on-the-scene questioning as to the facts surrounding a crime, or other general questioning of citizens in the fact-finding process, is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present."

In the instant case the confrontation of the petitioner by the police officer and the preliminary questioning which occurred cannot in any way be construed as custodial interrogation. Where a police officer is confronted with suspicious circumstances which can easily be resolved by an explanation from the person questioned, the custodial element contemplated by the Miranda decision is not present and the interview is merely investigative in nature. It is now well-settled in New York that routine police investigation of crimes or suspicious conduct at a person's home, his place of business or on the street does not require a *Miranda* warning. See *People* v. *Rodney P*, 21 N.Y. 2d 1, 10-11 (1967).

The People, therefore, respectfully submit that *Miranda* v. *Arizona* is not applicable to the facts of the instant case.

CONCLUSION

The writ should be denied.

Respectfully submitted,

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Attorney for Respondent

ROBERT N. ZAUSMER
Assistant District Attorney
of Counsel.

Exhibit A—Opinion of Supreme Court, Appellate Division, Second Department

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on October 23, 1973.

HON. JAMES D. HOPKINS,
Acting Presiding Justice.
HON. FRED J. MUNDER
HON. HENRY J. LATHAM
HON. J. IRWIN SHAPIRO
HON. ARTHUR D. BRENNAN
Associate Justices.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

v.

FRED CASTELHUN,
Appellant.

Order on Appeal from Judgment of Conviction

In the above entitled action, the above named Fred Castelhun, defendant in this action, having appealed to this court from a judgment of the County Court, Nassau County, rendered March 16, 1973; and the said appeal having been argued by Matthew Muraskin, Esq., of counsel for the appellant, and argued by Thomas R. Hession, Esq., of counsel for the respondent, and due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is:

ORDERED that the judgment appealed from is hereby unanimously affirmed.

ENTER:

IRVING N. SELKIN
Clerk of the Appellate Division

Exhibit B—Certificate Denying Leave

STATE OF NEW YORK
COURT OF APPEALS

Certificate Denying Leave

Before:

HON. SOL WACHTLER,
Associate Judge.

THE PEOPLE OF THE STATE OF NEW YORK

against

FRED CASTELUN

I, SOL WACHTLER, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein,* there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Mineola, New York
November 27, 1973

/s/ SOL WACHTLER
Associate Judge

Received Nov. 28, 1973
Legal Aid Society
Criminal Division

* Description of Order: Judgment of County Court, Nassau County, dated March 16, 1973, affirmed by Appellate Division, Second Department, October 25, 1973.